

11 KAR 4:050. Set off of authority claims.

RELATES TO: KRS 44.030, 131.565, 164.748(10), (14), (19)

STATUTORY AUTHORITY: KRS 13B.170, 164.748(4), 34 C.F.R. 30.33, 31 U.S.C. 3718, 3720A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(10) and (14) authorize the authority to collect student loans from individual borrowers and to perform acts that are necessary or appropriate to carry out the purposes of the authority. KRS 131.565 and 31 USC 3720A provide that the authority may enter agreements with the Kentucky Revenue Cabinet and with the federal government to provide for the withholding of income tax refunds owed to individuals indebted to the authority to satisfy claims established by the authority. In accordance with KRS 44.030, the authority may submit a claim to the State Treasurer to withhold an amount due to an individual from the treasury against a claim of the authority. This administrative regulation establishes the process for notification and appeal afforded to an individual in implementing a set off of an authority claim through the Kentucky Revenue Cabinet, the State Treasurer, or the federal government.

Section 1. Federal Payment Setoff. (1) Notification.

(a) The authority shall, not less than sixty-five (65) days prior to submitting the claim to the federal government for setoff, send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of indebtedness to the authority for a sum certain for which setoff is sought pursuant to 31 USC 3718.

(b) The notification shall contain information sufficient to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim, and the right to dispute the claim. The notification may contain additional information as the authority may prescribe.

(2) Objection.

(a) A person notified pursuant to subsection (1) of this section may submit to the authority a written objection to the setoff of federal payments to repay the claim of the authority. This written objection shall specify the basis on which the authority's claim is disputed, including all legal and equitable defenses the petitioner may have against recovery by the authority. The petitioner may supplement the written statement of appeal prior to a final determination with additional documentation. The petitioner shall submit additional documentation as the authority may require based upon the particular facts alleged in the petitioner's statement of appeal.

(b) The authority, or its designated representative, shall make a final written determination of the validity of the claim and refrain from submitting the claim to the federal government pending the final determination if:

1. The person objects to the setoff of federal payments to repay the claim of the authority within sixty-five (65) calendar days of the date the notification required by subsection (1) of this section is sent; or

2. The person submits a written request to inspect records to the authority within twenty (20) days of the date of the notification described in subsection (1) of this section and subsequently submits a written objection to the authority not later than fifteen (15) days after the date the authority mails copies of the requested documents to the petitioner.

(c) The authority, or its designated representative, shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 pertaining to the existence, amount, or the person's liability on the particular debt in question or the terms of a prior repayment schedule, except if the petitioner demonstrates that:

1. Circumstances have changed or new information is available; or
2. The prior decision:

- a. Substantially disregarded or ignored the defense; or
- b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(d)1. The final determination of the authority shall be based on documentation submitted by the petitioner, other records relevant to the loan obligation received from another source, and relevant records of the authority, which shall be made available to the petitioner upon request, except that the petitioner may appear in person or by telephone to present additional facts upon request by the petitioner and explanation of why the authority cannot adequately resolve the issues raised by the petitioner by review of the documentary evidence.

2. The petitioner's request to appear in person or by telephone shall include identification of all persons that the petitioner wishes to have testify, identification of the specific issues regarding which each person is prepared to testify, and an explanation of the reasons why each person's testimony is necessary to resolve the issues.

3. The authority shall grant the petitioner's request to appear in person or by telephone if the authority determines, in its discretion, that the issues to be resolved require a determination of credibility or veracity.

4. Documentation considered by the authority and the record of an in-person or telephonic testimony shall constitute the record of the appeal.

5. The authority's decision shall be written and sent to the petitioner at his last known address. If the decision is adverse to the petitioner, the decision shall state the facts on which the decision is based, any applicable statutes or administrative regulations, the conclusion underlying the decision, and the amount of the authority's claim to be set off against federal payments owed to the petitioner.

(e) Review of final determination of the authority.

1. If the petitioner disagrees with the final, written determination of the authority, the petitioner may submit a written request for review of the decision by the Secretary of the U.S. Department of Education.

2. The authority, or its designated representative, shall refrain from referring the authority's claim to the federal government, if the request for review by the Secretary of the U.S. Department of Education is submitted to the authority and received by the authority within thirty (30) calendar days after the date the authority's final written determination is rendered and mailed to the petitioner.

(3) If a person notified pursuant to subsection (1) of this section does not submit an objection within the time specified in subsection (2)(b) of this section or, upon a final determination upholding, in part or in whole, the claim of the authority, the petitioner does not submit a request for review of the authority's final determination within the time specified in subsection (2)(e) of this section, the claim shall be referred by the authority to the federal government in accordance with 31 USC 3718 and 34 CFR 30.33(a).

(4) Voluntary repayment. A person notified pursuant to subsection (1) of this section may agree to repay the debt to the authority on terms satisfactory to the authority.

(a) The authority, or its designated representative, shall refrain from referring the authority's claim to the federal government, if:

1. The person owing the debt:

- a. Agrees to make monthly payments; and
- b. Submits the first payment to the authority; and

2. The payment is received by the authority not later than:

a. The 65th calendar day following the date the notification required by subsection (1) of this section is sent;

b. The seventh calendar day after the date the authority's final written determination is rendered and mailed to the petitioner; or

c. The 15th calendar day after documents are mailed to the person owing the debt by the authority if the person requests to inspect documents within twenty (20) calendar days following the date the notification required by subsection (1) of this section is sent.

(b) For purposes of paragraph (a) of this subsection, the authority shall require that payments be received monthly on a timely basis and a downpayment of the lesser of the outstanding balance of the debt or \$250. The monthly payment amount acceptable to the authority shall be based upon the balance owed and at least equal the monthly accrual of interest on the debt, except that the monthly payment amount may be less than the monthly accrual of interest on the debt based upon consideration of the petitioner's and the petitioner's spouse's disposable income and reasonable and necessary expenses including housing, utilities, food, medical costs, work-related expenses, dependent care costs, and other student loan repayments.

(c)1. After the authority has referred a claim to the federal government for setoff against a federal payment owed to the person owing the debt, an amount previously set off shall not be refunded.

2. The authority's claim for setoff shall be withdrawn if the person owing the debt or another person on behalf of the debtor agrees to make monthly payments acceptable to the authority, submits six (6) consecutive, timely payments as agreed, and requests the authority to withdraw the claim for setoff.

3. The monthly payment amount acceptable to the authority shall be based upon the balance owed and at least equal the monthly accrual of interest on the debt, except that the monthly payment amount may be less than the monthly accrual of interest on the debt based upon consideration of the petitioner's and the petitioner's spouse's disposable income and reasonable and necessary expenses including housing, utilities, food, medical costs, work-related expenses, dependent care costs, and other student loan repayments.

(d) In support of a monthly payment amount less than the monthly accrual of interest, the petitioner shall submit to the authority:

1. Evidence of current income;
2. Evidence of current expenses; and
3. A statement of the unpaid balance on all other student loan debt.

(e) If a person establishes a repayment schedule in accordance with this subsection and subsequently fails to submit consecutive, timely payments, a subsequent repayment schedule established for the purpose of paragraphs (a) or (c) of this subsection shall require an initial payment of the lesser of the outstanding balance of the debt or \$500 plus ten (10) percent of the outstanding balance that exceeds \$1,000.

Section 2. (1) State income tax refund setoff.

(a) Notification.

1. The authority shall, not less than thirty (30) days prior to submitting the claim to the Kentucky Revenue Cabinet for setoff, send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of indebtedness to the authority for a sum certain for which setoff is sought pursuant to KRS 131.560.

2. The notification shall contain sufficient information to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim pursuant to KRS 131.560, and the right to dispute the claim. The notification may contain additional information as the authority may prescribe.

(b) Objection.

1. A person notified by the authority pursuant to paragraph (a) of this subsection or notified by the Kentucky Revenue Cabinet pursuant to KRS 131.570(1) may petition the authority for an administrative review and a hearing in accordance with 11 KAR 4:030, Sections 4 and 5.

2. The authority, or its designated representative, shall refrain from referring the authority's claim to the Kentucky Revenue Cabinet, if the request for administrative review is submitted to the authority and received by the authority within thirty (30) calendar days after the date the notice required by paragraph (a) of this subsection is sent.

(2) Setoff of amounts due from the State Treasurer pursuant to KRS 44.030.

(a) Notification.

1. The authority shall, not less than fifteen (15) calendar days prior to submitting the claim to the Kentucky State Treasurer for setoff, send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of indebtedness to the authority for a sum certain for which setoff is sought pursuant to KRS 44.030.

2. The notification shall contain sufficient information to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim pursuant to KRS 44.030, and the right to dispute the claim. The notification may contain additional information as the authority may prescribe.

(b) Objection.

1. A person notified by the authority that an amount due from the State Treasurer may be withheld pursuant to KRS 44.030 may petition the authority for a hearing in accordance with 11 KAR 4:030, Section 5.

2. The authority, or its designated representative, shall refrain from referring the authority's claim to the Kentucky State Treasurer, if the request for administrative review is submitted to the authority and received by the authority within fifteen (15) calendar days after the date the notice required by paragraph (a) of this subsection is sent.

(3) Defenses.

(a) Except as provided in paragraph (b) of this subsection, a debtor may assert a legal or equitable defense to a claim by the authority for setoff pursuant to subsections (1) and (2) of this section pertaining to the existence, amount or the person's liability on the particular debt in question or the terms of a prior repayment schedule.

(b) The designated authority representative conducting an administrative review in accordance with 11 KAR 4:030, Section 4, or the hearing officer conducting a hearing pursuant to 11 KAR 4:030, Section 5, shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 pertaining to the existence, amount, or the person's liability on the particular debt in question or the terms of a prior repayment schedule, except if the petitioner demonstrates that:

1. Circumstances have changed or new information is available; or

2. The prior decision:

a. Substantially disregarded or ignored the defense; or

b. Was arbitrary, capricious, not supported by the facts or made through fraud. (11 Ky.R. 1528; eff. 5-14-85; Am. 12 Ky.R. 659; 1227; eff. 1-3-86; 21 Ky.R. 1907; eff. 4-6-95; 25 Ky.R. 385; 806; eff. 10-1-98.)